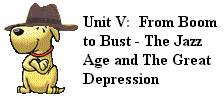
## **Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**



**Period: \_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

# *Schenck vs. The United States* (1919)

*Schenck vs. The United States* (1919) challenged the constitutionality of the Sedition Act. The defendant, [Charles Schenck](http://en.wikipedia.org/wiki/Charles_Schenck), a Socialist, circulated a flyer that spoke out against the draft and intended to distribute it to recent drafties. Federal officials arrested Schneck for violating the Sedition Act by “conspiring to obstruct the recruiting and enlistment services of the United States.” After a four day trial, Schenck was found guilty and sentanced a six-month sentence. He appealed the case to the Supreme Court on the grounds that the Sedition Act violated his First Amendment right to free speech.

## **Assert Your Rights!**

The Socialist Party says that any individual or officers of the law entrusted with the administration of conscription regulations violate the provisions of the United States Constitution, the supreme law of the land, when they refuse to recognize your right to assert your opposition to the draft.

In exempting clergymen and members of the Society of Friends (popularly called Quakers) from active military service the examination boards have discriminated against you.

If you do not assert and support your rights you are helping to "deny or disparage rights" which it is the solemn duty of all citizens and residents of the United States to retain.

In lending tacit or silent consent to the conscription law, in neglecting to assert your rights, you are (whether knowingly or not) helping to condone and support a most infamous and insidious conspiracy to abridge and destroy the sacred and cherished rights of a free people. You are a citizen: not a subject! You delegate your power to the officers of the law to be used for your good and welfare, not against you.

They are your servants; not your masters. Their wages come from the expenses of government which you pay. Will you allow them to unjustly rule you?

No power was delegated to send our citizens away to foreign shores to shoot up the people of other lands, no matter what may be their internal or international disputes.

To draw this country into the horrors of the present war in Europe, to force the youth of our land into the shambles and bloody trenches of war crazy nations, would be a crime the magnitude of which defies description. Words could not express the condemnation such cold-blooded ruthlessness deserves.

Will you stand idly by and see the Moloch of Militarism reach forth across the sea and fasten its tentacles upon this continent? Are you willing to submit to the degradation of having the Constitution of the United States treated as a "mere scrap of paper"?

No specious or plausible pleas about a "war for democracy" can becloud the issue. Democracy cannot be shot into a nation. It must come spontaneously and purely from within.

Democracy must come through liberal education. Upholders of military ideas are unfit teachers.

To advocate the persecution of other peoples through the prosecution of war is an insult to every good and wholesome American tradition.

You are responsible. You must do your share to maintain, support, and uphold the rights of the people of this country.

In this world crisis where do you stand? Are you with the forces of liberty and light or war and darkness?

The Supreme Court ruled 9-0, that the Sedition Act *was* Constitutional and upheld Schneck’s conviction. Justice Oliver Wendel Holmes in the majority opinion stated that Schneck did not deny that the intent was to encourage people to break the law and was therefore guilty. He went on to strike down the First Amendment argument by stating…

“

We admit that, in many places and in ordinary times, the defendants, in saying all that was said in the circular, would have been within their constitutional rights. But the character of every act depends upon the circumstances in which it is done. The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. It does not even protect a man from a ban against uttering words that may have all the effect of force. The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. When a nation is at war, many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight, and that no Court could regard them as protected by any constitutional right. The statute of 1917, punishes conspiracies to obstruct, as well as actual obstruction. If the act (speaking, or circulating a paper), its tendency, and the intent with which it is done are the same, we perceive no ground for saying that success alone warrants making the act a crime.

”

**Questions:**

1. Schneck stated in the flyer that the draft is a violation of the 13th Amendment (by comparing the draft to slavery). Do you agree or disagree with his point of view? Why or why not?
2. Give an example from the flyer of how Schneck expresses a socialist view point. Do you think his political leanings had an impact in this case? Why or why not?
3. Why would the government be concerned about individuals or groups speaking out against the draft?
4. Why did Justice Holmes state that Schneck did NOT have the right to freedom of speech in this case? What example does he give to underscore his point?
5. This case created what is called in legal circles the “clear and present danger” test reguarding free speech. What do you think that means?
6. Do you agree with this interpretation of the First Amendment? Why or why not?
7. Do you think Schneck should have had the right to distribute this flyer? Why or why not?
8. Example in action: Do you have the right to come to school wearing a t-shirt that provokes someone to violence or action? Why or why not?